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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 09/733,754   | 12/08/2000  | James R. Smith II    | 256/075                 | 2790             |
| 7590   | 06/30/2004  |                      | EXAMINER                |                  |
| word of net acquisition corp.<br>1430 glencoe drive<br>arcadia, CA 91006 |             |                      | ROBINSON BOYCE, AKIBA K |                  |
|  |             |                      | ART UNIT                | PAPER NUMBER     |
|  |             |                      |                         | 3623             |

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/733,754             | SMITH, JAMES R.     |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Akiba K Robinson-Boyce | 3623                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 December 2000.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Due to communications filed 12/8/00, the following is a non-final first office action. Claims 1-31 are pending in this application and have been examined on the merits. Claim 1-31 are rejected as follows.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1 and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of :

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful art" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 1 is directed to a method of determining a marketing appearance frequency measurement for at least one target point of presence for a

company. Claim 1 recites the steps of "searching at least one media space to determine the number of times the at least one target point of presence appears within the at least one media space", "calculating weighted values for each appearance", "calculating an open score...", "calculating a marketing appearance frequency measurement for the at least one target point of presence...". These steps do produce a useful, concrete and tangible result, however, they represent mere ideas in the abstract since they do not provide computer means or software embodied on a tangible medium for processing these steps. Since no computer means or software embodied on a tangible medium exist, claim 1 and all claims that depend from it, (claims 2-14) are therefore found to be non-statutory.

In the present case, claim 15 is directed to a method of determining a marketing appearance frequency measurement for at least one target URL of a company. Claim 15 recites the steps of "searching at least one media space to determine the number of times the at least one target URL appears within the at least one media space", "calculating weighted values for each appearance", "calculating an open score...", "calculating a marketing appearance frequency measurement for the at least one target point of presence...". These steps do produce a useful, concrete and tangible result, however, they represent mere ideas in the abstract since they do not provide computer means or software embodied on a tangible medium for processing the calculation steps. Since no computer means or software embodied on a tangible medium exist for processing the calculation steps, claim 15 and all claims that depend from it, (claims 16-14-22) are therefore found to be non-statutory.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-16, 19-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon (US 6,286,005).

As per claim 1, Cannon discloses:

searching at least one media space to determine the number of times the at least one target point of presence appears within the at least one media space, (Col. 49, lines 42-52, [incorporating information about the exposure values from the media planner], Col. 14, lines 26-33, [tracking behavior of sample population for visitors to a Web Page]);

calculating weighted values for each appearance, (col. 46, lines 37-58 and Fig. 23, [exposure values based on weighted effective frequency]);

calculating an open score by summing the weighted values, (col. 46, lines 59-64, [total value of multiple exposures]);

calculating a marketing appearance frequency measurement for the at least one target point of presence, wherein the marketing frequency measurement is equal to an exponential function of the open score adjusted for the scope of the search, (col. 51, lines 36-44, [deriving the effective frequency], w/ Col. 67, line 60-Col. 68, line

16, [scores for weighted effective frequency determined by summing subtotals for alternative B, here, exponential functions are shown in equation (nth power)].

Cannon doesn't explicitly disclose that the weighted values are weighted so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked, however this limitation is obvious with Cannon since Cannon does disclose that show that the advertising plan can be adjusted so that excess exposures in a particular group of people can be shifted from one group to another in Col. 56, line 55-Col. 24, line 24. This shift proportions the marketing appearance of these advertisements for group A and group B so that excess exposures for group B are shifted to group A. In this case, the business attribute can be sales as shown in 41, lines 6-21.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to weigh the values so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked with the motivation of exposing the advertisement to the customers at a rate where sales will increase accordingly.

As per claims 2, 16, Cannon discloses:

calculating an open score for each media space, wherein each open score is additive so that the open scores can be added to derive a combined open score, which is used to calculate the marketing appearance frequency measurement, (col. 67, lines 60-65, [sum of subtotals]).

As per claims 3, 27, Cannon doesn't explicitly disclose wherein adjusting the open score for the scope of the search comprises dividing the open score by an estimation of the maximum open score for the at least one media space searched. However, Cannon does disclose determining which spot contributes most represents the maximum open score in Col. 57, lines 9-12, and adjusting by dividing advertisements between the groups by shifting exposures according to the determination of which spot contributes most in col. 56, lines 55-61.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to divide the open score by an estimation of the maximum open score for the at least one media space searched with the motivation of adjusting the open score according to an estimated factor.

As per claims 4, 28, Cannon doesn't explicitly disclose wherein adjusting the open score for the scope of the search comprises dividing the open score by the total number of points of presence of the same type as the at least one target point of presence that were observed during the search, but does disclose determining the average frequency by dividing the total number of impressions by the total reach. This average frequency can be used in determining which spot contributes most as shown in Col. 57, lines 9-12, and the score is then adjusted by dividing advertisements between the groups by shifting exposures according to the determination of which spot contributes most in col. 56, lines 55-61.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to adjust the open score for the scope of the search comprises

dividing the open score by the total number of points of presence of the same type as the at least one target point of presence that were observed during the search with the motivation of adjusting the score based on the presence factor of the advertisement.

As per claims 5, 29, Cannon discloses:

wherein the exponential function comprises a term equal to 1 minus the exponential of the open score adjusted for the scope of the search, (Col. 55, lines 20-21, [see equation])..

As per claims 6, 30, Cannon discloses:

wherein the exponential function further includes a scaling factor designed to place the resulting marketing appearance frequency measurement within a predetermined range, (Col. 50, lines 62-64, [range considered to be valuable]).

As per claim 7, Cannon discloses:

wherein the media spaces comprise offline sources, online sources, or both, (col. 6, lines 8-12, [browsing information for individuals accessing web pages]).

As per claims 8, 31, Cannon discloses:

wherein the weighted values are calculated to represent the likelihood each appearance will be seen and effect the business attribute being tracked, (col. 35, lines 22-31, [number of times each has seen the advertisement]) .

As per claim 9, Cannon discloses:

further comprising the step of validating the marketing appearance frequency measurement to known customer traffic, sales, or both, (col. 41, lines 6-21, [sales and level of involvement]).

As per claim 10, Cannon discloses:

calibrating the marketing appearance frequency measurement using known traffic, sales, or both, (col. 56, line 55-Col. 57, line 23, [determining which spot contributes and shifting the exposure]).

As per claim 11, Cannon discloses:

further comprising the step of using the marketing appearance frequency measurement to predict at least one of the following:

customer traffic; sales, stock price; advertising expenditures; and awareness, (col. 41, lines 6-21, [sales\level of involvement]).

As per claim 12, Cannon discloses:

further comprising the step of using the marketing appearance frequency measurement to identify the sources of customer traffic resulting from the at least one target point of presence, (col. 52, lines 54-58, [shows determining target audience]).

As per claim 13, Cannon discloses:

further comprising the steps of calculating a marketing appearance frequency measurement for at least one target point of presence for a plurality of companies and generating a marketing appearance frequency index from the calculated marketing appearance frequency measurements, (col. 3, lines 44-48, [available to a much larger group {of businesses}], w/ Col. 35, lines 29-31, [summing exposure values to determine the valuation index])

As per claim 14, Cannon discloses:

wherein the at least one media space searched includes at least one of the following media spaces: telephone books, press releases, news articles, billboards, keyword-driven Internet search engines, categorical directories on Internet search engines, World-Wide Web banner ads, and other World-Wide Web pages, (col. 6, lines 8-12, [newspapers, web pages]).

As per claim 15, Cannon discloses:

searching at least one media space on World-Wide Web sites to determine the number of times the at least one target URL appears within the at least one medium space, (Col. 49, lines 42-52, [incorporating information about the exposure values from the media planner], w/ Col. 6, lines 8-12, [shows browsing information for individuals accessing web pages can be utilized], Col. 14, lines 26-33, [tracking behavior of sample population for visitors to a Web Page]);

calculating weighted values for each appearance, (col. 46, lines 37-58 and Fig. 23, [exposure values based on weighted effective frequency]);

calculating an open score by summing the weighted values, (col. 46, lines 59-64, [total value of multiple exposures]);

calculating a marketing appearance frequency measurement for the at least one target URL, wherein the marketing frequency measurement is equal to an exponential function of the open score adjusted for the scope of the search, (col. 51, lines 36-44, [deriving the effective frequency], w/ Col. 67, line 60-Col. 68, line 16, [scores for weighted effective frequency determined by summing subtotals for alternative B, here, exponential functions are shown in equation (nth power)], in this

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case, the target URL is obvious since when browsing on a Web page, one must click a URL in order to get to the next Web page]).

Cannon doesn't explicitly disclose that the weighted values are weighted so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked, however this limitation is obvious with Cannon since Cannon does disclose that show that the advertising plan can be adjusted so that excess exposures in a particular group of people can be shifted from one group to another in Col. 56, line 55-Col. 24, line 24. This shift proportions the marketing appearance of these advertisements for group A and group B so that excess exposures for group B are shifted to group A. In this case, the business attribute can be sales as shown in 41, lines 6-21.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to weigh the values so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked with the motivation of exposing the advertisement to the customers at a rate where sales will increase accordingly.

As per claims 19, 22, Cannon discloses:

wherein each appearance is weighted based on the likelihood each appearance will be seen and effect the business attribute being tracked, (col. 35, lines 22-31, [number of times each has seen the advertisement]) .

As per claim 20, Cannon discloses:

wherein the business attribute being tracked is customer traffic, (Col. 41, lines 6-21, [level of involvement]).

As per claim 21, Cannon discloses:

further comprising the step of using the marketing appearance frequency measurement to predict customer traffic to the at least one target, (Col. 41, lines 6-21, [level of involvement], w/ col. 6, lines 8-12, [browsing Web Pages]).

As per claim 23, Cannon discloses:

a memory configured to store a computer program and data, (col. 12, lines 54-55, [computer program within the main memory]); and

a processor configured to run the computer program, (col. 12, lines 46-48, [processor]), the computer program configured to perform the following functions:

search certain pages on certain World-Wide Web sites to collect a set of observations relating to at least one target point of presence for a company, (Col. 14, lines 26-33, [tracking behavior of sample population for visitors to Web page]);

compute weighted values for each appearance of the target point or points of presence, (col. 46, lines 37-58 and Fig. 23, [exposure values based on weighted effective frequency]);

compute an open score by summing the weighted values, (col. 46, lines 59-64, [total value of multiple exposures]); and

compute a marketing appearance frequency measurement from the open score for the target point or points of presence, wherein the marketing frequency measurement is equal to an exponential function of the open score adjusted for the

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scope of the search, and the weighted values are weighted so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked, (col. 51, lines 36-44, [deriving the effective frequency], w/ Col. 67, line 60-Col. 68, line 16, [scores for weighted effective frequency determined by summing subtotals for alternative B, here, exponential functions are shown in equation (nth power)].

Cannon doesn't explicitly disclose that the weighted values are weighted so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked, however this limitation is obvious with Cannon since Cannon does disclose that show that the advertising plan can be adjusted so that excess exposures in a particular group of people can be shifted from one group to another in Col. 56, line 55-Col. 24, line 24. This shift proportions the marketing appearance of these advertisements for group A and group B so that excess exposures for group B are shifted to group A. In this case, the business attribute can be sales as shown in 41, lines 6-21.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to weigh the values so that the marketing appearance frequency measurement is proportional to a business attribute to be tracked with the motivation of exposing the advertisement to the customers at a rate where sales will increase accordingly.

As per claims 24, 26, Cannon discloses:

wherein the computer program farther calculates a marketing appearance frequency measurement for at least one target point of presence for a plurality of

companies and generates a marketing appearance frequency index from the calculated marketing appearance frequency measurements, (col. 35, lines 29-31, [summing exposure values to determine the valuation index]).

As per claim 25, Cannon discloses:

wherein the computer program further estimates traffic for the at least one target point of presence based on the marketing appearance frequency measurement, (col. 2, lines 6-9, [based upon weekly viewing information prepared and presented]).

6. Claims 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon (US 6,286,005) as applied to claim 15 above, and further in view of Cezar et al (US 6,584,492).

As per claims 17, 18, Cannon fails to disclose wherein the searched media spaces include at least one of the following: keyword driven search result pages; search engine category pages; incoming links on third party pages, internet chat rooms; internet news groups; company press releases, and banner ads on any page, but does disclose that a search media page can comprise results from browsing on a web page in Col. 6, lines 8-12.

However, Cezar et al discloses:

wherein the searched media spaces include at least one of the following: keyword driven search result pages; search engine category pages; incoming links on third party pages, internet chat rooms; internet news groups; company press releases, and banner ads on any page, (abstract, lines 1-4, [banner advertising]). Cezar et al discloses this limitation in an analogous art for the purpose of showing that banner

advertisement can be used in order to determine information about the frequency in which a user displays a certain banner.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to utilize banner ads with the motivation of using banner ads as search media for determining the ad frequencies.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.  
June 17, 2004

  
TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600